

Examiner / Adjuster Licensure and Continuing Education in Montana

Statement of Purpose

Montana's statutes, augmented by workers' compensation court rulings, require that claims be administered by an "examiner" with full authority (39-71-107 MCA). Unfortunately, it is a standard in the workers' compensation industry to refer to those that investigate and make decisions as to benefit entitlement, as well as complete calculation and payment of benefits due, as adjusters. Not only is Montana somewhat out of the box with respect to the in-state examiner requirement, the change in name from adjuster to examiner (made to evade the recently passed adjuster licensing and continuing education requirements for adjusters licensed in Montana) is simply not understood by the workers' compensation industry outside of the state nor by injured workers in the state of Montana. Further, referring to those that handle Montana workers' compensation claims as examiners as opposed to adjusters does little to further our duty to those that we serve in the industry, the injured workers.

The Montana Workers' Compensation system is designed as outlined in the statutes to be as self-administering as possible, minimizing the need to involve litigation to promptly and correctly provide benefits that may be due. To achieve this high level purpose, initial training and ongoing education is critical for claims handlers. The nomenclature change from adjuster to examiner has unfortunately done little to assist the industry to attain success to meet this high level goal.

The Problem

The problem currently is three-fold. First, there are too few trained, experienced claims handlers in the state to meet the needs of the industry. Second, there is little incentive to attract intelligent young people to consider claims handling as a profession. Third, there are efforts from outside of the industry to place regulatory constraints upon the claims industry.

There are a number of reasons why there are too few claim handling professionals currently working in the workers' compensation industry. The profession is virtually unknown to non-industry people. Those that know about what workers' compensation claims handlers do with and for injured workers know that it is not an "easy" job, it is filled with many stressors and ethical issues not present in other occupations. Pay rates have historically lagged behind other professions involved with workers' compensation claims. Finally, there are no educational programs within or outside of our school system which provide any exposure to or training for the profession. The industry has historically taken an "all comers" approach to attracting workers' compensation claim handler talent...whoever shows some interest will be brought in, trained using non-standardized methods, given a computer (pen and pad in the old days), and given claims to investigate and handle.

The second issue is that of attracting young people to the industry. Younger generations have different expectations that they bring to the current workplace than generations that currently fill most of the claim handler ranks in Montana. Those that are responsible for recruiting and attracting talent to the claim handler ranks know that this is an issue that is

rising in severity. There is an increased expectation of “what's in it for me” with young people, a lesser desire to learn and a higher desire to be shown how and why. When recruits are confronted with the realities of the workers’ compensation claims industry, what really goes on day after day and what must be done to be successful in the position, fewer and fewer remain interested. Many of the best and brightest young people in Montana are not interested in workers’ compensation claims, it is seen as a job as opposed to a profession.

The third issue, far less philosophical, is that of external regulatory pressures. There have been efforts by persons who have had claims to mold and shape the industry after they have had less than optimal outcomes following their personal workers’ compensation claims. Those that feel disenfranchised, or worse cheated or mishandled, by the workers’ compensation system, will no doubt continue with their efforts to push for regulation of claim handlers and the workers’ compensation process. This message has reached the highest levels of our state government, and has the attention of other critical system stakeholders. If the industry is interested in participating in the process of how workers’ compensation claims handlers are to be regulated, the time is ripe.

The Solution

This document is proposed as a framework to allow the workers’ compensation claims industry to mold the process of such regulation so that it results in a process that better serves the population of injured workers and Montana’s employers, as well as raising the status of claims handling to a well-recognized profession in the state of Montana.

In order to proactively respond to these issues, it is proposed that consideration be given to revising the Montana statutes to allow for and require:

1. Creation of a Workers’ Compensation Examiner/Adjuster license; and
2. Mandatory Continuing Education requirements to maintain license status.

The system would be funded and administered by the DOL&I Employment Relations Division (“ERD”). The ERD is the primary regulatory body responsible for workers’ compensation in Montana, and is far more attuned to the needs of workers’ compensation than any other state agency.

Multi-industry examiners/adjusters would be protected. There are those in the industry that handle workers’ compensation claims as well as property, casualty, automobile, professional liability and other types of insurance and self-insured claims. To ensure efficiency in the process and aid these individuals, the Workers’ Compensation Examiner/Adjuster license would be given equal status with the Montana Adjusters license (administered by the Montana Department of Insurance). Continuing Education would be approved and administered by the ERD for the Workers’ Compensation Examiner/Adjuster license. With the WC license holding equal status with the existing Adjusters license, statutory reciprocity would be created so that CEs that apply to the Workers’ Compensation Examiner/Adjuster license would apply equally to the existing Adjusters license. This allows for an individual to

hold both the Workers' Compensation Examiner/Adjuster license and the existing Adjusters license concurrently, and to fulfill their CE requirements with the approved CE classes that best fit their current working responsibilities.

Some companies have located claims personnel in Montana. However, these Montana resident adjusters are in some cases responsible for administration of claims in states other than Montana. Multi-state adjusters would be protected. ERD will be provided statutory authority to seek out and achieve license and CE reciprocity with other states, acknowledging that requirements of license and CE reciprocity will be different for each of the external states. This will also provide an incentive for new and different companies to locate claims offices in Montana. If they can meet their "in-state" examiner requirements, and in addition administrate other states from Montana, they will be more likely to open offices in the state, resulting in increased Montana employment and additional Workers' Compensation professionals living in the state.

In order to achieve the Workers' Compensation Examiner/Adjuster license, a person will be required to:

- a) provide documentation of a certain level of experience in the Montana Workers' Compensation system ("grandfather" status); or
- b) take a test.

Grandfather minimum requirements, subject to review and amendment by the licensing adoption committee, include a minimum of two (2) years experience as a workers' compensation claims handler, of which at least one (1) year includes direct responsibility over Montana Workers' Compensation claims.

If not "grandfathered" in to a license, an individual will need to pass a test of minimum education and skills to achieve licensure. There are currently no schools or organizations which offer workers' compensation specific education or testing for workers' compensation claims handlers. With respect to the format, content and administration of the Workers' Compensation Examiner/Adjuster license test, the ERD will work with the licensing adoption committee to set the appropriate minimum standards. Testing is envisioned to include a program administered by the ERD, possibly in conjunction with the ERD's annual adjuster training meetings across the state in addition to an on-line option, as well as working with accredited external companies that meet minimum requirements set by the ERD and licensing adoption committee. So as not to exclude companies or individuals because of financial constraints, testing cost for an individual should be held to \$100 or less, with the cost covering three (3) test sessions (two subsequent tests should the first test result in a score less than the passing level).

There is a need to keep the Workers' Compensation Examiner/Adjuster license system as close to parallel to the existing Montana adjusters license system as possible for ease of administration by those that hold both licenses. Similar to the Montana adjusters license, the Workers' Compensation Examiner/Adjuster license will be issued on a two year basis. Issuance of the initial license will be without cost to the individual if they have passed a course as outlined above (cost of the course includes the first two (2) year license). License

renewal will be completed in the month of the licensed person's birth once every two years, CE documentation must be to the ERD prior to the first day of the birth month of the individual's renewal month/year. It is envisioned that the cost of the license renewal will be \$100 for each two (2) year renewal. For individuals with both the Workers' Compensation Examiner/Adjuster license and the DOI adjusters license, the cost will be \$200 each two (2) year renewal (\$100 paid to ERD for the Workers' Compensation Examiner/Adjuster license and \$100 paid to DOI for the P/C adjusters license).

Once a person holds a Workers' Compensation Examiner/Adjuster license in good standing, they will need to provide documentation to ERD of successful completion of Continuing Education classes. It is envisioned that to achieve parity with the existing CE requirements for a Montana Adjusters license (administered by the DOI), a similar number of credit hours and content requirements will be utilized. This means that 24 hours of approved, accredited course hours must be completed each two (2) year period. Those that handle workers' compensation claims must have an understanding of the statutes; keep current with Workers' Compensation Court law and the rulings passed down by the Supreme Court. Two (2) hours of these CE course must include an ERD created agenda dealing specifically with legislative and case law changes in the Montana workers' compensation system. The ERD along with the license adoption committee will be responsible for approval, audit and oversight of Montana Workers' Compensation CE courses. The goal of CE requirements is to provide a minimum standard for ongoing education / training for those that are involved in the decision making, bill paying, benefit provision and handling of Workers' Compensation claims in the state of Montana. To encourage participation and minimize external expenditures, all three workers' compensation plans and claims administrators will be allowed to self-administer ERD approved CE programs, subject to preapproved notice and audit requirements to be determined.

Licensing and CE requirements are intended to include Workers' Compensation Examiner/Adjuster licensees working for all three Workers' Compensation plans in Montana. In order to achieve the best possible administration of the Montana system, and achieve the primary goal of efficient, litigation-minimized administration of claims as set out in Montana statute. Assuring those that become injured in the course and scope of their Montana employment that handle their claims handlers meet certain minimum standards and must be licensed to handle their claims, and those claims handlers are provided state approved Continuing Education in order to keep their licenses, will go far towards raising and enhancing the credibility of Montana's Workers' Compensation claims handling profession. Through this process, those working as Workers' Compensation Examiners and Adjusters will better discharge their obligations to the injured workers who enter the system.

The Process

It is anticipated that this issue will be addressed by the Labor / Management Advisory Council chaired by the Lt. Governor, leading to legislation in the 2009 session. A working group will be formed to assist the Council with specifics for legislation and implementation. It is suggested that the working group to be referred to as the "Licensing Adoption Committee",

and that the group will include the following industry members currently conducting business in the state of Montana:

- 1 member – Plan Three – Montana State Fund
- 2 members – Plan Two – One each from separate insurance companies
- 2 members – Plan One – One each from separate self-insured organizations
- 2 members – One each from separate Third Party Claims Administration companies (“TPA”)
- 1 member – Current member of the Labor/Management Advisory Council
- 1 Chairperson – Staff member of Employment Relations Division (“ERD”)

The Licensing Adoption Committee will meet in person or by telephone conference in conjunction with all Labor/Management Advisory Council meetings. The chairperson of the committee will provide regular updates to the Labor/Management Advisory Council.